

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, and Russ Dixon, individually and as representatives of a class of similarly situated persons, and on behalf of the M&T Bank Corporation Retirement Savings Plan,

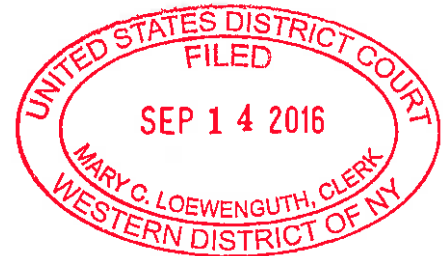
Plaintiffs,

vs.

M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Janet Coletti, Michele Trolli, Mark Czarnecki, Stephen Braunscheidel, Brian Hickey, Darren King, Kevin Pearson, Michael Spychala, Brent O. Baird, C. Angela Bontempo, Robert T. Brady, T. Jefferson Cunningham III, Gary N. Geisel, John D. Hawks, Jr., Patrick W.E. Hodgson, Richard G. King, Melinda R. Rich, Robert E. Sadler, Jr., Herbert L. Washington, Robert G. Wilmers, Robert J. Bennett, Michael D. Buckley, Jorge Pereira, Colin E. Doherty, Denis J. Salamon, Newton P.S. Merrill, and John Does 1–20,

Defendants.

Civil Action No.: 1:16-cv-375-FPG



Jacqueline Allen, individually and on behalf of herself and all others similarly situated,

Plaintiff,

vs.

M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Robert G. Wilmers, Michael P. Pinto, Mark J. Czarnecki, and John Does 1-40,

Defendants.

Civil Action No.: 1:16-cv-0704-FPG

**JOINT STIPULATION AND ORDER TO COORDINATE RELATED
CASES AND ESTABLISH PRELIMINARY CASE SCHEDULE**

Plaintiffs Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, Russ Dixon and Jacqueline Allen (collectively "Plaintiffs") and Defendants M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Janet Coletti, Michele Trolli, Mark Czarnecki, Stephen Braunscheidel, Brian Hickey, Darren King, Kevin Pearson, Michael Spsychala, Brent O. Baird, C. Angela Bontempo, Robert T. Brady, T. Jefferson Cunningham III, Gary N. Geisel, John D. Hawks, Jr., Patrick W.E. Hodgson, Richard G. King, Melinda R. Rich, Robert E. Sadler, Jr., Herbert L. Washington, Robert G. Wilmers, Robert J. Bennett, Michael D. Buckley, Jorge Pereira, Colin E. Doherty, Denis J. Salamon and Newton P.S. Merrill ("Defendants," and together with Plaintiffs, collectively the "Parties"), respectfully submit this joint stipulation to coordinate the above-captioned actions and establish a preliminary case schedule. In support of their stipulation, the Parties state as follows:

1. On August 17, 2016, Plaintiffs Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, and Russ Dixon filed their First Amended Class Action Complaint against M&T Bank Corporation ("M&T" or the "Company") and certain other Defendants in Civil Action No.: 1:16-cv-375-FPG (the *Habib* Action"), alleging that Defendants breached fiduciary duties under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, with respect to the M&T Bank Corporation Retirement Savings Plan (the "Plan"). Defendants' response to the Amended Complaint is currently due on September 16, 2016.

2. On September 1, 2016, Plaintiff Jacqueline Allen filed a related action asserting the same or similar claims against M&T and many of the same Defendants in Civil Action No.: 1:16-cv-0704-FPG (the "*Allen* Action").

3. Because the *Habib* Action and the *Allen* Action are based on the same or similar factual allegations and contain the same or similar causes of action under ERISA against overlapping Defendants, Plaintiffs intend to seek consolidation of the actions pursuant to FED. R. CIV. P. 42(a) for all purposes, including trial.

4. In the meantime, the Parties wish to coordinate the litigation of the actions and set certain preliminary case deadlines (subject to the approval of the Court).

5. Specifically, Plaintiffs propose that by no later than September 30, 2016, they will file a joint motion seeking consolidation of the above-captioned actions, along with any similar actions filed in or transferred to this District in the future. On or before the same date, Plaintiffs will file a motion for appointment of interim class counsel pursuant to FED. R. CIV. P. 23(g)(3).

6. The Parties further propose that, in the event that consolidation of the actions is approved by the Court, Plaintiffs will file a Consolidated Complaint within 30 days of the Court's Order consolidating the actions that will supersede the existing complaints in the *Habib* and *Allen* Actions.

7. The Parties further agree that Defendants need not respond to the amended complaint in the *Habib* Action or the complaint in *Allen* Action because those complaints will be superseded by a Consolidated Complaint if the Court consolidates the two actions.

8. This stipulation is made in good faith and not for any dilatory purpose, and the Parties will not be prejudiced by the granting of this stipulation.

NOW THEREFORE, Plaintiffs and Defendants, through their respective counsel, STIPULATE AND AGREE, subject to the approval of the Court:

1. Defendants do not need to respond to the amended complaint in the *Habib* Action or the complaint in the *Allen* Action because Plaintiffs intend to file a Consolidated Complaint that will supersede their existing complaints if the Court consolidates the two actions;

2. By September 30, 2016, the Plaintiffs shall file their motion for consolidation, and Plaintiffs shall file their motion for appointment of interim lead counsel by the same date; and

3. In the event that consolidation of the actions is granted by the Court, Plaintiffs shall file a Consolidated Complaint within 30 days of the Court's Order consolidating the actions.

4. Defendants shall have 45 days from the filing of the Consolidated Complaint to answer, move to dismiss or otherwise respond to the Consolidated Complaint. If Defendants move to dismiss the Consolidated Complaint, Plaintiffs shall have 45 days to file a response to that motion, and Defendants shall have 30 days to file a reply.

Dated: September 13, 2016

Respectfully submitted,

SULLIVAN & CROMWELL LLP

NICHOLS KASTER, PLLP

/s/ Richard C. Pepperman, II

Richard C. Pepperman, II
Matthew A. Schwartz
M. David Possick
125 Broad Street
New York, NY 10004
Telephone: 212-558-4000
Facsimile: 212-558-3588
Email: peppermanr@sullcrom.com
schwartzmatthew@sullcrom.com
possickmd@sullcrom.com

/s/ Kai Richter

Kai Richter, MN Bar No. 0296545*
Carl F. Engstrom, MN Bar No. 0396298*
Jacob Schutz, MN Bar No. 0395648*
*admitted in W.D.N.Y.
4600 IDS Center
80 S 8th Street
Minneapolis, MN 55402
Telephone: 612-256-3200
Facsimile: 612-338-4878
Email: krichter@nka.com
cengstrom@nka.com
jschutz@nka.com

Counsel for Defendants

Counsel for Plaintiffs Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, and Russ Dixon

TREVETT CRISTO ATTORNEYS

/s/ Lucinda Lapoff

Lucinda Lapoff, Esq.
2 State Street, Suite 1000
Rochester, NY 14614
Tel: (585) 454-2181
Fax: (585) 454-4026
Email: clapoff@trevettcristo.com

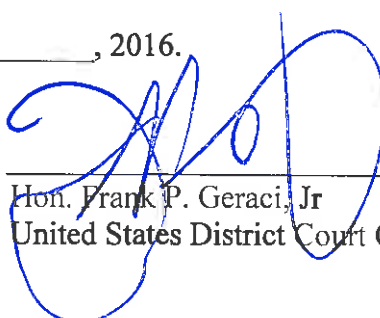
**KESSLER TOPAZ MELTZER
& CHECK, LLP**

Edward W. Ciolko
(*pro hac vice* motion to be filed)
Donna Siegel Moffa
(*pro hac vice* motion to be filed)
Mark K. Gyandoh
(*pro hac vice* motion to be filed)
Julie Siebert-Johnson
(*pro hac vice* motion to be filed)
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Fax: (610) 667-7056
Email: eciolko@ktmc.com
dmoffa@ktmc.com
mgyandoh@ktmc.com
jsjohnson@ktmc.com

Counsel for Plaintiff Jacqueline Allen

IT IS SO ORDERED

Dated this 13th day of Sept, 2016.



Hon. Frank P. Geraci, Jr.
United States District Court Chief Judge